

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18TH STREET- SUITE 300

DENVER, CO 80202-2466

Phone 800-227-8917

<http://www.epa.gov/region08>

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DOCKET NO.: FIFRA-08-2006-0007

IN THE

MATTER OF:

)
)

TRI-COUNTY AG., INC.

48203 County Road M

Burlington, CO 80807

(EPA Establishment No. 074626-CO-001)

RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

7.19.06
DATE

SIGNED
Elyana R. Sutin

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Docket No. FIFRA-08-2006-0007

IN THE MATTER OF:)
)
Tri-County Ag., Inc.) **COMPLAINT AND EXPEDITED**
) **SETTLEMENT AGREEMENT (CESA)**
48203 County Road M)
Burlington, CO 80807)
(EPA Establishment No.: 074626-CO-001),)
)
Respondent)
_____)

A. JURISDICTION

1. This Complaint and Expedited Settlement Agreement ("CESA") is issued to Tri-County Ag., Inc. ("Respondent") for a violation of FIFRA 12(a)(2)(L).
2. The undersigned Environmental Protection Agency ("EPA"), Region 8 officials issue this CESA under the authority vested in the Administrator of EPA by section 14(a)(1) of FIFRA, 7 U.S.C. § 1361(a).
3. This section authorizes EPA to bring an action under section 14(a)(1) of FIFRA, 7 U.S.C. § 1361(a)(1), for civil administrative penalties against Respondent who has violated a requirement or prohibition of FIFRA.

B. ALLEGED VIOLATION

1. Respondent is a "person" within the meaning of section 2(s) of FIFRA, 7 U.S.C. section 136(s), and therefore subject to regulation.
2. Respondent is a "distributor/seller" as defined by section 2(gg) of FIFRA 7 U.S.C. section 136(gg) and a "producer" as defined by section 2(w) of FIFRA 7 U.S.C. 136(w).
3. Respondent produces, sells and distributes registered "pesticides" within the meaning of section 2(u) of FIFRA, 7 U.S.C. section 136(u).
4. Under section 12(a)(2)(L) of FIFRA, an annual report is required by March 1st for the previous year.
5. EPA reviewed its records and determined that Respondent did not submit the "Pesticide Report for Pesticide-Producing and Device-Producing Establishments" pursuant to section of 7 FIFRA, 7 U.S.C. section 136(e) for calendar year 2005, by March 1, 2006. Respondent is therefore in violation of FIFRA.

6. Upon consideration of the nature, circumstances, extent and gravity of the violation and Respondent's ability to continue in business, the size of Respondent's business, prior history of compliance, degree of culpability, lack of economic benefit resulting from the violations, its good faith and immediate effort to comply once informed of the violations, other matters as justice may require, and upon consideration of the entire record herein, EPA offers this CESA under its expedited enforcement procedures in order to settle the violation based upon the findings noted above, for the total civil penalty amount of **three thousand nine hundred dollars (\$3,900.00)**.

C. CIVIL PENALTY

1. The Respondent signing below admits that EPA has jurisdiction over the subject matter alleged in the CESA, neither admits nor denies the specific factual allegations contained in the CESA, and consents to the assessment of the penalty as stated in paragraph B.6., above.
2. Respondent consents to the issuance of a Final Order which incorporates the terms and conditions of this CESA and to pay the civil penalty set forth in paragraph C.3. below.
3. Respondent agrees to pay the of **three thousand nine hundred dollars (\$3,900.00)** penalty amount in **four (4)** installments of **nine hundred seventy-five dollars (\$975.00)**. Respondent specifically agrees that should it be delinquent with any installment payment, interest due shall be calculated from the date of the issuance of the Final Order as set forth in paragraph C.6, below.
4. The first penalty installment of \$975 is due on or before August 30, 2006. The second penalty installment of \$975 is due on or before November 30, 2006. The third penalty installment of \$975 is due on or before February 30, 2007. The fourth and final penalty installment of \$975 is due on or before May 30, 2007. If the due date falls on a weekend or legal Federal holiday, the due date is the next business day. The date the payment is made is considered to be the date of the deposit ticket (standard form 215) issued by the Mellon Bank described below. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day. Respondent shall make these **four** installment payments by remitting a cashier's or certified check for the specified amount, including the name and docket number of this case (the docket number is listed in the first page of this CESA), for the this amount, payable to "Treasurer, United States of America," to:

Regular Mail:

Mellon Bank
Lockbox 360859
Pittsburgh, PA 15251-6859

Federal Express, Airborne, or other commercial carrier:

U.S. EPA, 360859
Mellon Client Service Center Rm 154-0670
500 Ross Street
Pittsburgh, PA 15251-6859

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

ABA = 021030004
TREAS NYC/CTR/
BNF=/AC-68011008

5. A copy of the check shall be sent simultaneously to:

Tim Osag
Senior Enforcement Coordinator
Technical Enforcement Program (8ENF-T)
U.S. EPA Region VIII
999 18th Street, Suite 300
Denver, CO 80202-2466

And

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region VIII
999 18th Street, Suite 300
Denver, CO 80202-2466

6. In the event payment is not received by the specified due date, interest accrues from the date of the final consent order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received (i.e., on the 1st late day, 30 days of interest accrues). Respondent agrees and consents that if Respondent fails to pay the penalty amount on the due dates set forth in paragraph C.4. above, any unpaid balance thereof, shall become due and owing by the Respondent, or EPA, in its sole discretion, may waive all or part of such acceleration.
7. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 61st day from the date of the final consent order, and each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e., the 121st day from the date the final consent order is signed). Payments are first applied to handling charges, 6% penalty interest, and late interest; then any balance is applied to the outstanding principal amount.

D. TERMS AND CONDITIONS

1. Nothing in this CESA shall be construed as a waiver by EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this CESA.
2. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this CESA and to bind the party he/she represents to the terms and conditions of this CESA.
3. Each party shall bear its own costs and attorneys fees in connection with this matter.

4. Respondent has the right to request a hearing on any material fact or on the appropriateness of the penalty contained in this CESA pursuant to 40 C.F.R. § 22.15. By signing and returning of this CESA to EPA, the Respondent waives the opportunity for a hearing pursuant to section 554 of the Administrative Procedure Act, 5 U.S.C. §554.
5. This CESA, upon incorporation into a Final Order, applies to and is binding upon EPA and upon Respondent and Respondent's parent, affiliates, heirs, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this CESA. This CESA, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violation alleged in the CESA.
6. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

In the Matter of: Tri-County Ag., Inc. (Burlington, CO)
Docket No: FIFRA-08-2006-0007
(Continued)

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8, Office of Enforcement, Compliance
and Environmental Justice, Complainant.

Date: 7/12/06

By: SIGNED
Elisabeth Evans, Director
Technical Enforcement Program

Date: 7/13/06

By: SIGNED
Michael T. Risner, Director
David Janik, Supervisor
Legal Enforcement Program

Date: 7/12/06

By: SIGNED
Eduardo Quintana, Attorney
Legal Enforcement Program

In the Matter of: Tri-County Ag., Inc. (Burlington, CO)
Docket No: FIFRA-08-2006-0007
(Continued)

Tri-County Ag., Inc.,
Respondent.

Date: 7-12-06

By: SIGNED

Name, Title: Ryan Niebur, Pres.

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMPLAINT/EXPEDITED CONSENT AGREEMENT/FINAL ORDER** in the matter **TRI-COUNTY AG., INC., DOCKET NO.: FIFRA-08-2006-0007** was filed with the Regional Hearing Clerk on July 19, 2006.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Eduardo Quintana, Enforcement Attorney, U. S. EPA – Region 8, 999 18th Street, Suite 300, Denver, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt requested on July 19, 2006, to:

Ryan Niebur
President
Tri-County Ag., Inc..
48203 County Road M
Burlington, CO 80807

July 19, 2006

SIGNED

Tina Artemis
Regional Hearing Clerk

**THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE
ON JULY 19, 2006.**

